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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Myanmar

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on the situation of human rights in Myanmar, prepared by Mr. Rajsoomer Lallah, Special Rapporteur of the Commission on Human Rights, in accordance with General Assembly resolution 51/117 of 12 December 1996 and Economic and Social Council decision 1997/272 of 22 July 1997.

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Annex

Interim report on the situation of human rights in Myanmar, prepared by the Special Rapporteur of the Commission on Human Rights, in accordance with General Assembly resolution 51/117 and Economic and Social Council decision 1997/272

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I. INTRODUCTION

1. The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar has been described in each of the reports of the Special Rapporteur to the General Assembly (A/47/651, A/48/578, A/49/594 and Add.1, A/50/568 and A/51/466) and to the Commission on Human Rights (E/CN.4/1993/37, E/CN.4/1994/57, E/CN.4/1995/65 and Corr.1, E/CN.4/1996/65 and E/CN.4/1997/64). The mandate, initially articulated by the Commission in its resolution 1992/58 of 3 March 1992 and extended most recently in resolution 1997/64 of 16 April 1997 (approved by the Economic and Social Council in its decision 1997/272 of 22 July 1997), required the Special Rapporteur to establish or to continue direct contacts with the Government and people of Myanmar, including political leaders deprived of their liberty, their families and their lawyers, with a view to examining the situation of human rights in Myanmar and following any progress made towards the establishment of a constitution of democratic governance, the lifting of restrictions on personal freedoms and the restoration of human rights in Myanmar. In its resolution 1997/64, the Commission called upon the Government of Myanmar to cooperate fully with the relevant mechanisms of the Commission, in particular the Special Rapporteur, and to ensure his access to Myanmar, without preconditions, in order to allow him to discharge his mandate fully, including through access to any person whom he might deem it appropriate to meet in the performance of his mandate; requested the Secretary-General to give all necessary assistance to the Special Rapporteur; and requested the Special Rapporteur to report to the General Assembly at its fifty-second session and to the Commission at its fifty-fourth session.

2. The priority concerns of the international community with regard to the situation of human rights in Myanmar are referred to in the resolutions adopted by the various competent organs of the United Nations over the past six years, in particular General Assembly resolution 51/117 and Commission resolution 1997/64, which are the most recent. These concerns may be summarized, in substance, as follows:

(a) The continuing violations of basic human rights, including extrajudicial, summary or arbitrary executions, death in custody, torture, arbitrary and politically motivated arrests and detention, absence of due process of law, including trial of detainees in secrecy without proper legal representation, severe restrictions on freedom of opinion, expression, movement, assembly and association, forced relocation, forced labour by children as well as adults, including portering for the military, abuse of women and children by government agents and oppression of ethnic and religious minorities;

(b) The absence of significant steps towards the establishment of democratic governance as expressed by the will of the people at the elections of 1990;

(c) The exclusion of the representatives democratically elected in 1990 from participation in the long-drawn-out proceedings of the National Convention, the severe restrictions on delegates, including members of the National League for Democracy (NLD), who have withdrawn and subsequently were formally excluded

from the sessions of the Convention and who were unable to meet or distribute their literature, the adoption by the Convention of a basic principle conferring on the armed forces (Tatmadaw) a leading role in the future political life of the State and the conclusion that the National Convention does not appear to constitute the necessary steps towards the restoration of democracy;

(d) The severe restrictions on the freedom of expression, association, assembly and movement placed upon Daw Aung San Suu Kyi and other political leaders, harassment, detention and forced resignations of elected representatives, the recent attack against Daw Aung San Suu Kyi and other NLD members and the mass arbitrary arrest of and the harsh sentences imposed on members of NLD and other supporters of democratic groups, including persons peacefully exercising their political and civil rights;

(e) The forced relocation and other violations of the rights of persons belonging to minorities, resulting in a flow of refugees to neighbouring countries, and the continuing attacks on groups, resulting in death, destruction and displacement;

(f) The violation of the rights of children in contravention of the Convention on the Rights of the Child, in particular through the lack of conformity of the existing legal framework with the Convention, by the systematic recruitment of children into forced labour and by discrimination against children belonging to ethnic and religious minority groups.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

3. Since his appointment in June 1996 and, despite the request renewed in latest resolutions of the General Assembly and the Commission on Human Rights that he have direct access to the Government and people of Myanmar, the Special Rapporteur has so far not been allowed by the Government to visit the country and to see the situation on the ground.

4. It is significant to note that in their responses made after the presentation of the reports of the Special Rapporteur to the General Assembly in November 1996 (A/51/466) and to the Commission on Human Rights in April 1997 (E/CN.4/1997/64), the representatives of the Government of Myanmar in New York and Geneva indicated that the Special Rapporteur would have the opportunity to visit Myanmar at a mutually convenient time.

5. Under those circumstances, the Special Rapporteur wrote for the fourth time to the Government of Myanmar seeking its cooperation and requesting its authorization to visit the country. In his latest letter, dated 4 June 1997, the Special Rapporteur referred to his previous letters dated 9 and 26 July 1996 and 9 January 1997. The Special Rapporteur again expressed his continuing desire to have the cooperation of the Government in order to allow him to discharge his mandate fully. He reiterated his wish to visit Myanmar as soon as possible to examine the situation in situ and to meet with appropriate governmental representatives as well as other persons relevant to the fulfilment of his mandate, adding that "such a visit would greatly assist in the

establishment of a fruitful and constructive dialogue". There has again been no response to his letter.

6. The Special Rapporteur wishes to express his regret that although he has for more than a year remained ready to visit the country and to examine and discuss the situation in situ, he has yet to be allowed by the Government of Myanmar to see the situation on the ground, despite the requests expressed in the resolutions of the General Assembly and the Commission on Human Rights.

7. Notwithstanding the absence of cooperation on the part of the Government of Myanmar, the Special Rapporteur, through his missions and consultations, has continued to receive much assistance and information from governmental, intergovernmental and non-governmental sources. He has also received information from individuals connected in one way or another with the situation in Myanmar. He has further received several well-documented reports describing the situation in Myanmar, particularly in relation to the matters over which the General Assembly and the Commission on Human Rights have expressed concern.

8. In his continuing effort to obtain the most accurate and up-to-date information on the situation of human rights in Myanmar, the Special Rapporteur visited Thailand in December 1996 to assess the situation of the displaced persons from Myanmar living in refugee camps along the Thailand-Myanmar border. He reported on the situation of persons belonging to the ethnic minorities living in the border areas. Displacement has become a way of life for many of them. For the past 30 years, the Karen, Mon, Karenni and Shan ethnic groups have had to flee their homes and lands in order to avoid conscription into compulsory labour for the military, in particular for portering or for development projects. The Special Rapporteur has also mentioned the frequent violent attacks against persons and property, which have often resulted in forced displacement. In addition to those developments, which have caused serious consequences and social problems for the population living in that area, military operations have recently been undertaken in Karen State, and artillery bombardment is reported to have caused not only property damage but also human suffering and loss of life. The findings of the mission are reflected in section III of the report to the Commission on Human Rights.

9. In both of his reports, the Special Rapporteur described the politico-legal system in Myanmar. The present legal and institutional framework through which legislative, executive and judicial powers continued to be exercised in Myanmar was not in conformity with established international norms governing human rights. Those norms required that the authority of Government be based on the will of the people and that such will be expressed in genuine elections in which everyone is entitled to participate, either directly or through freely chosen representatives. Several years had passed since the will of the people in Myanmar was freely expressed in general elections in 1990, but that will continued to be frustrated. The National Convention, established by the authorities in 1993 to devise principles to govern a new constitution, had been afflicted by criticism that it is unrepresentative, that its procedures obstruct meaningful debate and, in particular, that it coffers a leading role on the armed forces in the future political life of the country. There was no indication as to when its proceedings would end.

10. In the meantime, the suppression of the exercise of civil and political rights had been reported to have attained new heights. A panoply of laws continued to be used to criminalize and punish the very exercise of civil and political rights. There were still frequent allegations of arbitrary killings of civilians and insurgents by members of the armed forces. Acts of torture or other cruel or inhuman treatment were reported to occur frequently, especially in connection with large-scale displacement of persons belonging to ethnic minorities. Due process of law continued to be flouted. In particular, NLD and its leadership were reported to be the constant subject of harassment and oppression to the extent that NLD found it necessary to write to the authorities to highlight specific instances of arrest, harassment and other unjustified actions by officials. On the other hand, peaceful protests by students were reported to have been met by the closure of the universities, thus putting in jeopardy the education of a generation of the youth of the community.

11. The Special Rapporteur concluded in his reports that the absence of respect for the rights pertaining to democratic governance, as expressed by the people in the elections of 1990, was at the root of all the major violations of human rights in Myanmar and that the establishment of a democratic order in itself would create the most secure basis to remedy the situation and to create the proper infrastructure for the protection and enjoyment of human rights.

12. As the Special Rapporteur awaits the response of the Government of Myanmar to his request for a visit to the country, he continues to study the general situation of human rights in Myanmar. His final report to the Commission will again address the situation in terms of the human rights obligations of Myanmar. In the meantime, the Special Rapporteur submits the present report, which is based upon information received up to 30 August 1997.

III. RIGHTS PERTAINING TO DEMOCRATIC GOVERNANCE

13. In the absence of any improvement in the overall situation of human rights in Myanmar, the Special Rapporteur must state with regret that his previous conclusions relating to the causes of human rights violations in Myanmar remain valid. The Special Rapporteur had previously emphasized that the core of the problem in Myanmar lay in the absence of respect for rights pertaining to democratic governance insofar as that absence implied a structure of power that was autocratic and accountable only to itself, thus inherently resting on the denial and repression of fundamental rights.

14. The politico-legal structure of Myanmar has not changed in the past year, and the exercise of power under such a structure continues to be used in a manner and to an extent that persistently violates basic and universally accepted civil and political rights. The laws in place in Myanmar, on which the Special Rapporteur commented in his previous reports, continue to be used together with a host of executive orders to criminalize many aspects of normal civilian conduct, especially political activities. In that regard, the Special Rapporteur continues to receive information that gives rise to grave concerns.

15. With respect to restrictions on political parties, reports indicate that in Myanmar they are subject to intense and constant monitoring by the State Law and

Order Restoration Council (SLORC). In that regard, the Special Rapporteur received several reports of acts aimed at restricting the activities of political parties in addition to the existing SLORC orders, including one prohibiting the assembly of five or more persons, which remains in effect. Members of political parties are not allowed to leave their locality without prior permission from the authorities, otherwise they risk arrest and interrogation by the police or military intelligence agents.

16. Numerous reports indicate that although Daw Aung San Suu Kyi is no longer under house arrest, her freedom of movement, association and expression nevertheless continue to be severely curtailed by the presence of military roadblocks outside her residence. The objective of the roadblocks is to prevent or deter people from seeing her and to put a stop, since the end of last year, to her weekly meetings and addresses to the members of NLD, its sympathizers and the citizens of Myanmar generally. The reports further indicate that she is subject to vilification and unsubstantiated allegations by certain officials of the regime and the government-controlled media without the possibility of defending herself. Indeed, it would appear that even watching a videotape portraying her could amount to a criminal offence.

17. It was reliably reported that 11 men and 6 women members of NLD left Prome by train on the evening of 11 February 1997 to attend the NLD Union Day celebration at Yangon. When the train stopped at Tharawaddy station, soldiers and policemen arrived, arrested 15 NLD members (two of the women were not arrested) and took them away by car to the quarters of the thirty-fifth regiment. The four women arrested were Daw Myint Myint Khin, Daw Tin Hlaing, Daw Than Than Nu and Daw Aye Mya San. The men were U Aund Myint, U Myo Thein, U Aung Myo Myint, U Shwe Thein, U Myint Than, U Paik Tin, U Myint Htwe, U Chit Tin, U Win Naing, U Aung Thein Win and U Thein Zaw. Seven people who had come from Prome and Kama by car to attend the NLD Union Day celebration were also reportedly arrested in Tharawaddy.

18. Fifty-eight others, including U Aye Than, U Ohn Naing, U Khin Maung Myint, U Min Aung, U Tin Myint, U Ohn, Ko Tin Oo, Daw Tin Tin Hla, Daw San Yee, Daw San San Myint, Daw Sein Sein, Ma Tin Than Oo, Ma Tin Than Aye, Daw Khin Kyu and Ma Aye Aye Mar, were also arrested while they were on their way to attend the Union Day celebration in Yangon. U Khin Maung, U Chit Than, U Pe Win and U Thein Han were also arrested while on the way to attend the Union Day celebration. U Thaung Aye, a member of the NLD Irrawaddy Division organizational committee, was told to sign an undertaking not to go outside Maubin. Because he refused, he was sentenced to three months in prison.

19. Gatherings of political parties are routinely repressed; NLD members and their sympathizers are prevented from attending the gatherings. They are methodically arrested either on their way to such meetings, as mentioned above, or after attending the gatherings.

20. U Soe Hlaing, Chairman of the NLD organizational committee of Thanatpin, U Tin Tun, Secretary, and U Soe Nyunt, Joint Secretary, were reportedly arrested because they attended the NLD Union Day celebrations. U Tin Tun was released, while the others were charged under section 5(e) of the 1950 Emergency Provision Act and sent to Pegu jail.

21. Dr. Hla Win, NLD Member of Parliament representing Kyaungon, Mahn Tin Win, interim Chairman of the NLD organizational committee of Kyaungon township, U Wa Toke, U San Shein and U Thein Han attended the Union Day ceremony. After they went back to Kyaungon, a township meeting was held on 15 February 1997. While the meeting was in process, two carloads of policemen and military intelligence officers arrived and ran into the NLD office. Hla Win and U Saw Lwin were handcuffed and taken to the police station with 14 other members of the organizational committee. A certificate and other papers were taken away. All 16 were held at the Kyaungon police station until 17 February, when all except Hla Win, U Saw Lwin, U Thein Han, Mahn Tin Win, U Wa Toke and U San Shein were released. Charges were brought against the six, who are reportedly still under house arrest.

22. According to reports from a number of sources, the harassment and arrests culminated during the third week of May 1997 when more than 300 NLD members were arrested as a pre-emptive attempt by Myanmar authorities to prevent a party congress commemorating the seventh anniversary of the NLD victory in the 1990 elections. Those arrested included at least 60 elected Members of Parliament and senior party members. Many of the arrests took place in the Mandalay and Sagaing divisions as the NLD members were preparing to travel to Yangon to attend the congress. In other parts of the country, such as Ayeyarwadey Division and Shan, Mon and Kayin (Karen) states, it was further reported that a dozen others were detained in their homes and have been told that they would be arrested if they attempted to go to Yangon. The congress was due to take place on 27 and 28 May 1997 at the home of the NLD General Secretary, Daw Aung San Suu Kyi.

23. On 27 May 1997, the Chairman-Rapporteur of the Working Group on Arbitrary Detention, together with the Special Rapporteur, sent a letter to the Myanmar Minister for Foreign Affairs drawing the attention of the Myanmar authorities to information received and requesting information concerning the situation of the above-mentioned persons and the legal basis of their detention.

24. On the same day, the officer-in-charge of the Office of the United Nations High Commissioner for Human Rights issued a press release expressing his deep concern at reports of detentions and arrests of NLD members and called upon the Government of Myanmar to respect fully international norms of human rights and the principles enshrined in the Universal Declaration of Human Rights.

25. The Myanmar authorities questioned the validity and objectivity of the sources of the information. According to Myanmar officials, most of the information provided was not accurate because it emanated from sources hostile to the Government. The Myanmar authorities denied that anyone had been arrested or detained. In that regard, the Office of the United Nations High Commissioner for Human Rights received a letter dated 18 June 1997, the following extracts of which speak for themselves:

> "The NLD's so-called election anniversary was held in Yangon on 22 and 26 May 1997. The meeting was chaired by NLD Central Executive Committee members U Aung Shwe and U Tin Oo. Seventy party members attended the meeting. The points from the annual party were discussed during the course

of the meeting and the outcome of the deliberations were to be circulated to party members after 28 May 1997.

"No preparations had been made inside Daw Aung San Suu Kyi's compound or any other place to hold meetings on 27 and 28 May 1997

"No official request was put up to the authorities concerned by the NLD officials to hold such meetings.

"However, invitations were distributed by NLD not only to its members, but also to diplomats and journalists.

"About 80 NLD members gathered at four different points on the morning of 27 May 1997. The embassies of the United States, United Kingdom, Australia and Italy sent representatives to attend the function.

"The NLD members and the embassy officials were briefed by the authorities that no official request was made by the NLD officials to hold such meetings and that no preparations have been made at Daw Aung San Suu Kyi's residence for those gatherings. The authorities, after explaining the situation, requested them to leave the area.

"No one had been arrested by the authorities. But there were instances where local authorities had requested some invited party members to refrain from taking a course of action which is geared to create chaos and instability in the country.

"The Government is only trying to maintain law and order as well as stability in the country.

"The situation in Yangon is calm and business is going on as usual."

26. Distribution of party literature to the public is not allowed, and political parties are generally forbidden to use any means such as videotapes or printing equipment for the reproduction and distribution of their bulletins, pamphlets and statements. In this situation, it is difficult to assume that open discussion can possibly take place in Myanmar. The expression of political views is not permitted unless it is in support of the present military regime. Thus, in Minchaung village of Inle Lake in Nayungshwe, U Nhaung, U Aung Ba, U Soe Win and U Chit Pwe were reportedly sentenced to two years' imprisonment each for watching a videotape that featured Daw Aung San Suu Kyi.

27. U Hla Myint, NLD Member of Parliament representing Maubin, was given a prison sentence of two years on the ground that he had spoken disrespectfully to Township Law and Order Restoration Council (TLORC). U Win Shein, chairman of the NLD township organizational committee, was kept in prison for six months for making a speech and flying the NLD flag. U San Myint, NLD Member of Parliament for Laymyetnha, was sentenced to two years in prison under the videotape act.

28. The Special Rapporteur continues to receive reports alleging that SLORC continues to harass and keep the NLD supporters under pressure by sentencing their members under made-up charges when they decline to resign. Thus,

U Khin Tun was reportedly told by SLORC to resign from his position as Secretary of the NLD organizational committee in Maubin. He refused to resign and was consequently sentenced to three months in prison.

29. U Saw U Re was reportedly forced to resign from NLD and also from Parliament and then sentenced to 17 years' imprisonment.

30. NLD members who refused to resign and who have not been arrested, and their families, are reportedly facing other harassments, such as being forced to vacate apartments.

31. U Nyunt Win, an NLD Member of Parliament representing the Yeki constituency, was told by SLORC to resign from his position. Because he refused, he was told by the Town and Village Housing Development Board, which claimed that its action was in accordance with the directive dated 6 November 1996 of the Irrawaddy Division Law and Order Restoration Council, to vacate the State-owned apartment where he and his family lived.

32. U San Pe, a member of NLD, had allowed an NLD office to be opened in his house. His wife, Daw Ohn Kyi, had a small restaurant on the grounds of Shwebo College. She was told that her husband was not free from party politics and was made to shut down her shop in October 1996. U Aung Kyaing, NLD Member of Parliament representing Nyaungdon, was pressured to resign from NLD and from Parliament. His daughter, a schoolteacher, was threatened with dismissal if her father did not resign.

33. It would appear that, as a result of harassment or pressure from the authorities, a considerable number of NLD Members of Parliament have resigned in the period from 1991 to 1996.

34. The following NLD Members of Parliament have reportedly resigned since the beginning of 1997: U Aung Tin, representing Shadaw, Kayah, and U Boe Thin, representing Loikaw, Kayah, on 13 January; U Thaung Ye, representing Danubyu, Irrawaddy, on 21 January; U Maw Ni, representing Yesagyo, Magwe, on 11 February; Daw Sein Tin, representing Shwegu, Kachin, on 23 February; Dr. Thaung Tin, representing Wundwin, Mandalay, on 25 February; U Saw Htun Lwin, representing Hlaingbwe, Karen, on 5 March; U Pu Htwe, representing Bhamo, Kachin, on 17 March; U Tin Ohn, representing Padung, Pegu, on 21 March 1997; U Kyaw Win, representing Htigyang, Sagaing, on 8 May; and U Than Kywe, representing Hlaingthaya, Yangon, resigned on 18 June.

35. In August 1997, Yangon Radio Myanmar reported as follows:

> "U Ba Nyein of the National League for Democracy, an elected member of the People's Assembly in Banmauk township constituency, Sagaing Division, during the multiparty democratic general elections, citing old age and poor health, has submitted his resignation of his own volition to withdraw as elected representative."

> "U Tun Yi of the National League for Democracy, an elected member of the People's Assembly in Thandwe [Sandoway] township constituency, Arakan state, during the multiparty democratic general elections, has submitted

his resignation of his own volition to withdraw as elected representative as he has already resigned from the NLD."

"Khin Maung Swe of the National League for Democracy, an elected member of the People's Assembly in Sagaing township constituency-2, Sagaing Division, during the multiparty democratic general elections, has submitted his resignation of his own volition to withdraw as elected representative as he had already retired from NLD."

36. The Special Rapporteur has received information that on 21 February 1997, in Taungu, Pegu Division, 18 members of the Taungu NLD Township Organizational Committee were taken away by the police and members of the Ward/Village Law and Order Restoration Councils without any reason given. Those taken away were U Myat Thu, U Saw Tun Nwe, U Maung Win, U Myint Thein, U Thet Tun, U Kyaw Win, U Tin Thaung, U Kyaw Myint, U Tun Tin, U Tin Soe, U Pe Win and U Kyaw Win. Those arrested were taken away in army vehicles on 22 February. According to reports dated 24 February, the arrested people were seen in an army camp near Tabye village in Htandabin township. Later, U Saw Tun Nwe was found dead at a roadside in the vicinity of his native village.

37. The following members of NLD in Kyaungon township have, according to information received by the Special Rapporteur, been sentenced to prison: U Tin Aung (NLD Member of Parliament for Wakema), U Kyaw Din (Chairman of NLD Organizational Committee), U Ko Wai (Secretary), U Aung Kywe (Joint Secretary), U Win Kyi, U Tun Shwe, U Tin Nyein, U Maung Kan, U Yu Wai, U Pe Tin and Daw Khin Yee are reported to be serving time in Maungmya Jai. They were charged under section 5(e) of the 1950 Emergency Provision Act for having taken a prominent part in the funeral of a one-time member of the NLD Organizational Committee.

Due process of law

38. The Special Rapporteur, in his previous report to the General Assembly (A/51/466, paras. 62 to 71), analysed the notion of due process of law in Myanmar. He came to the conclusion that neither is due process of law respected nor is the rule of law upheld. The information received during the past year confirms that there is consistent failure to respect due process and the rule of law, as the following examples demonstrate.

39. In January 1997, the trial of 20 people was, according to reports received by the Special Rapporteur, held in a closed session in Yangon and the accused were denied access to legal counsel. The group, which included six NLD members was jailed for seven years for allegedly "inciting students and non-students during December 1996 student demonstrations".

40. It was reported that U Thaung Tin, the Chairman of the NLD Organizational Committee at Palaing village in Shwebo township, was arrested, summarily tried on the same day and given a two-year prison sentence. He was accused of inciting farmers to refrain from selling rice to the authorities.

41. The Special Rapporteur has received information that U Hla Min, an NLD Member of Parliament for Kawthaung, Tenasserim, was denied access to legal

counsel and was not informed what he was accused of. He was sentenced to seven years in prison under section 5(e) of the 1950 Emergency Provision Act.

42. Another reported case of an unfair trial has been brought to the attention of the Special Rapporteur. At Insein prison, 22 political prisoners were refused access to legal counsel. There were also reports that beatings and torture were used as a means of obtaining confessions for use as evidence against some of the accused. The prisoners (Myo Myint Nyein, Zaw Tun, Nyunt Zaw, Soe Htet Khaing, Aung Kyaw Oo, Zaw Min, Phyo Min Thein, Win Thein, Aung Myo Tint, Htay Win Aung, Yin Htway, Win Tin, Hla Than, Ko Ko Oo, Kyi Pe Kyaw, Kyaw Min Yu, Myat Tun, Sein Hlaing, Zaw Myint Aung, Soe Myint, Ba Myo Thein) were charged under section 5(e) of the 1950 Emergency Provision Act for writing and distributing allegedly false information. They all received an additional sentence of seven years with hard labour.

IV. THE RIGHT TO FORM AND JOIN TRADE UNIONS

43. With respect to the right to form and join trade unions, and notwithstanding the fact that Myanmar is a party to International Labour Organization (ILO) Convention No. 87 of 1948 concerning freedom of association and protection of the right to organize, workers and employees in Myanmar do not enjoy the right to join organizations of their own choice outside the existing structure. Furthermore, such organizations do not have the right to join federations and confederations or to affiliate with international organizations without impediment.

44. This year again, the situation in Myanmar was examined by the ILO Committee on the Application of Standards at the eighty-fifth session of the International Labour Conference held in June 1997 at Geneva. Regarding the application by Myanmar of ILO Convention No. 87, the Committee took note of the statement of the Myanmar Government representative indicating his Government's commitment to harmonize law and practice with the Convention in promoting and protecting the legitimate rights of all workers.

45. The Committee recalled, however, that the case had been discussed by the Committee on numerous occasions, in 1987, 1989, 1993, 1994, 1995 and 1996, and expressed serious concern that the Government had not acted on the observations of the Committee of Experts over many years, and that no trade unions in the true sense of the term existed.

46. The Committee also insisted on the need for those organizations to have the right to affiliate with federations and confederations and with international organizations, without any interference from the public authorities. The Free Trade Unions of Burma is not allowed to function in the country, and workers identified with it were under constant surveillance by the police and the military intelligence agency in permanent fear of arrest and torture.

47. Being concerned with the complete absence of progress in the application of the Convention, the Committee on the Application of Standards once again urged the Government of Myanmar to adopt the measures and mechanisms necessary to guarantee, in legislation and in practice, to all workers and employers, without

any distinction or any previous authorization, the right to join organizations of their own choosing to protect their interests.

48. The Committee once again expressed its profound regret that it had not received a report from the Government, and that the government representative to the Conference Committee had only repeated what had been said in previous years concerning its intention to apply the Convention without being able to indicate that any specific positive developments had occurred in law and in practice. It recalled that it had been commenting upon the serious incompatibilities between the Government's law and practice, on the one hand, and the Convention, on the other hand, for 40 years.

49. In conclusion, the Committee expressed a firm hope that substantial progress in the application of the Convention might be noted in the very near future and urged the Government of Myanmar to supply a detailed report to the Committee of Experts at its next session. The Special Rapporteur cannot but join the Committee on the Application of Standards in the hope that it has expressed and in its efforts to assist the Government of Myanmar in fulfilling its obligations under Convention No. 87.

V. FORCED LABOUR

50. The prohibition of forced or compulsory labour can be found in several conventions. The 1930 convention concerning forced labour (ILO Convention No. 29) requires the suppression of the use of forced or compulsory labour in all its forms. The Convention defines forced or compulsory labour as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". Work or service exacted in virtue of compulsory military service laws for work of a purely military character is exempted from the provisions. This concerns military service for the purpose of national defence, but not compulsory obligations to execute public works. The Convention also makes an exception for work or service required in genuine cases of emergency and forming part of the normal civic obligations of citizens in a fully self-governing country. Another exception is prison labour. Prison labour may, however, be imposed only as a consequence of a conviction in a court of law, and the person concerned shall be supervised and controlled by public authorities and not be hired to or placed at the disposal of private individuals, companies or associations.

51. Another convention concerning forced or compulsory labour is the 1957 convention concerning the abolition of forced labour (ILO Convention No. 105). The Convention prohibits every kind of forced or compulsory work as:

(a) A means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;

(b) A method of mobilizing and using labour for purposes of economic development;

(c) A means of labour discipline;

(d) Punishment for having participated in strikes;

(e) A means of racial, social, national or religious discrimination.

52. A general prohibition against slavery or servitude is found in article 4 of the Universal Declaration of Human Rights. Also the International Covenant on Civil and Political Rights prohibits forced or compulsory labour, with similar exemptions as in the 1930 convention concerning forced labour (ILO Convention No. 29).

53. With respect to the prohibition of forced or compulsory labour and notwithstanding the fact that Myanmar since 1955 has been a party to ILO Convention No. 29 concerning forced labour, Myanmar still continues to use such labour.

54. Amendment or repeal of national legislation providing for the exaction of labour and services, under the threat of penalty, from residents who have not offered themselves voluntarily has been called for by the ILO Committee of Experts for the Application of Conventions and Recommendations in comments regularly addressed to the Government since 1964. Following the lodging of a representation by the International Confederation of Free Trade Unions in January 1993, the ILO Governing Body had urged the Government of Myanmar, in November 1994, to ensure that the relevant legislation, in particular the Village Act and the Towns Act, would be brought into line with the Forced Labour Convention, as had already been requested by the Committee of Experts, to ensure that the formal repeal of the power to impose compulsory labour be followed up in practice and to ensure that those resorting to coercion in the recruitment of labour be punished. At the International Labour Conference in June 1996, the Committee on the Application of Standards noted the persistent failure of Myanmar to implement the Convention, and 25 worker-delegates lodged a complaint against Myanmar under Article 26 of the ILO Constitution.

55. The complainants alleged that the Government of Myanmar had demonstrated its unwillingness to act upon the repeated calls addressed to it by the supervisory bodies of ILO to abolish forced labour in law and in practice, and that instead the practice of forced labour was becoming more widespread, and the authorities in Myanmar were directly responsible for its increasing use.

56. At its two hundred sixty-eighth session, in March 1997, the Governing Body decided to refer the complaint to a Commission of Inquiry chaired by Sir William Douglas (Barbados). The Commission's mandate is to consider whether, and to what extent, the alleged violations exist or existed and to make any recommendations it deems appropriate. The Commission held its first meeting in June 1997 to establish its rules of procedure, and is expected to hold formal hearings of witnesses in November 1997 in Geneva.

57. Forced labour is reportedly also taking place in all parts of Myanmar, including those where a ceasefire has been agreed upon. The most notorious form is front-line portering, whereby the army raids villages and towns for porters to carry its supplies and ammunition for offensives in the border regions. This is the form of forced labour where the most brutal treatment is inflicted and where most deaths occur. Front-line portering accompanies all SLORC military

operations, most recently the offensives against the Karen National Union in the dry season of 1997, in which an estimated 30,000 porters were recruited, and the offensives in Shan and Karenni states of 1996 and 1997. As a result of the ceasefires with the Kachin (1994) and a number of other groups, and the surrender of Khun Sa's Mong Tai Army in 1996, there has been a reduction in the number of actual front-line operations.

58. On 28 June 1997, according to reports received by the Special Rapporteur, 17 villagers were seized by SLORC troops at the village of Ho Thi, Laihka township. The villagers were forced to carry ammunition and other military equipment.

59. It has been reported that the Myanmar army has substantially increased its permanent presence in the border regions. This in turn has led to an increase in non-front-line forced labour for the military, such as non-front-line portering and courier duties; building, maintaining and guarding military roads and bridges; sweeping roads for mines, and building and servicing military camps and farms.

60. The Special Rapporteur has received reports about forced labour in Thabaung township, Irrawaddy Division. For the joint services manoeuvres of divisions 22, 33, 55 and 77 in the cool season of 1996/97, on all the village tracts within Thabaung township, villagers had to construct, at their own expense, temporary camps, barracks, stores, houses and furniture. The villagers also had to construct a road along the Hgawun River. To provide soil for the road, each household had to dig a pit of a specified size. While they were engaged in work connected to the military manoeuvres, the villagers were unable to carry out their own work, which resulted in a considerable drop in income for many of them. Because of lack of nutrition and the unhealthy conditions of the surrounding areas, many villagers engaged in the forced labour project suffered from various diseases. In addition, whole villages had to be moved in order to make room for the military manoeuvres.

61. On 4 July 1997, SLORC troops under the 44th Division led by Major Aung Zaw Htun reportedly forced the villagers who had been forced to relocate in Kunhing in 1997 to work for the army without any payment. The male villagers had to cut bamboo and build four layers of fences around the military camp, as well as dig trenches between the layers of fences.

62. Another form of forced labour that has been reported to the Special Rapporteur is work on commercial projects for the army such as rice farms, paddy, fish pond and tree-planting operations, which the local farmers have to build up and maintain. The required land is reportedly confiscated from local people.

63. Forced labour reportedly also occurs on infrastructure and "development" projects such as the construction and maintenance of roads, railways, bridges, airports, hydroelectric schemes and tourist-oriented projects.

64. According to reports received by the Special Rapporteur, forced labour was used to build a road from Ywamon to Zeebyugone in Natmauk township during October 1996. People from more than 40 villages in Natmauk were made to take

part in the project. Households that could not supply labourers were made to pay. Work hours were from 8 in the morning until 8 in the evening. Soldiers from 301 artillery regiment (Meiktila), in charge of the project, punished, regardless of age, those whose work they did not find satisfactory. The victims were punched, made to hop like frogs, run up and down and turn somersaults in mud patches.

65. It was reported that 13 people, including two women, were arrested on 15 January 1997 because they refused to take part in a forced labour project to build a road from Bassein to Thalatgwa to Morton Point. Each household in 33 village tracts had to provide one and a half baskets of rock. Households that could not provide rock had to pay 2,000 kyats to the Village Law and Order Restoration Council. The people who went to break rocks were not given any medical care and many came back from their forced labour sessions with various illnesses. U Chit is reported to have fallen sick and died at the labour site. U Khin Maung Win, Maung Kyin Hoke and Mang Nyo also died while providing forced labour. It is also reported that Daw Ni, 60 years old and unable to provide either labour or money, was arrested on 6 January 1997 and sent to Bassein jail on 8 January 1997.

66. The Special Rapporteur has been informed that TLORC built a stupa in the Kyingyi village tract of Wuntho township. The farmers of the township had to provide labour in turn. TLORC decreed that those labourers should be referred to as "donors of labour". Not only were households obliged to provide labour, but those who could not provide labour themselves had to hire substitutes. Some of the villagers working on the project were beaten. The authorities in charge said after they had beaten the villagers that they did not care if complaints were lodged against them.

67. There were reports about forced contributions towards road and bridge construction projects in Pwintbyu, Magwe Division. In Pwintbyu township, landowners were made to contribute money towards the construction of the Man Bridge. The landowners were assessed at the rate of 200 kyats per acre owned. The whole township had to contribute to the construction of the Kanthagyi-Kyaungdawya road. The contributions were assessed at the rate of 250 kyats per acre. All the households in the township, including the poorest, had to contribute 360 kyat each to the building of Salin Road. Every household had to contribute between 45 and 70 kyats once every two weeks for years for the Natyegan Road construction. Farmers were forced to sell two baskets of split beans per acre to the authorities at specified prices. Those who refused to sell were made to stay under the hot sun for hours as punishment. Those who complained about their treatment were beaten.

68. Forced labour has also been resorted to in Kawhmu township. In the construction of the road to Htamanaing village in December 1996, every household had to provide labour or contribute money.

VI. VIOLATIONS AGAINST ETHNIC MINORITIES

69. The Special Rapporteur addressed the situation in the ethnic minority States, especially those along the Myanmar/Thailand border, in his previous reports to the General Assembly (A/51/466, paras. 37-51) and to the Commission on Human Rights (E/CN.4/1997/64, paras. 65-100). The Special Rapporteur has received well-documented information on military attacks and looting on civilian settlements, forced relocation of ethnic groups, forced labour for development and industrial projects and portering for military operations in apparent manoeuvres against insurgents or those suspected of supporting them.

70. In his report to the Commission on Human Rights, the Special Rapporteur called upon the Government of Myanmar to take immediate steps to put an end to the forced displacement of persons, to prohibit the practice of forced labour and forced portering and to prevent arbitrary killings and confiscation of property in the ethnic minority areas.

A. Violations of civil rights

71. Allegations received by the Special Rapporteur concerned serious and widespread violations of almost all civil rights. In particular, there are persistent allegations of violations of the rights to life, liberty and security of person; the freedom from arbitrary arrest, detention and torture and cruel, inhuman treatment or punishment; the right to due process of law; and the freedom of movement. According to reports and testimonies received, those allegations related especially to three governmental tactics:

(a) Forced displacement;

(b) Indiscriminate bombardment of civilian settlements and arbitrary killings;

(c) Arbitrary arrest and torture of suspected "insurgents" and "terrorists".

1. Forced displacement

72. Reports indicated that the effect of the actions of the Government of Myanmar in the ethnic minority areas was to force the relocation of the inhabitants from their traditional and ancestral homeland to relocation sites that were subject to tight military control.

73. The Special Rapporteur observes that at present, forcible relocations appear to be taking place in two main contexts: as part of development projects and under counter-insurgency operations in ethnic minority regions of the countryside. Although the practice of forced relocation by the military as a means to control the population living in ethnic regions is not new, the scale of such moves increased significantly in 1996, and it is still taking place today, especially in central Shan State and in Kayah State.

74. Victims of displacement are mostly peasants, including members of indigenous and/or ethnic groups such as the Karen, Karenni, Shan and Mon, who are living in areas of insurgency and victimized by counter-insurgency activities or caught in the crossfire. Most of them have not been officially registered and do not possess any identification cards or other documents. In most cases, it was reported that persons were given at most one week's notice to move and were told that they would be shot if they did not comply. They were forced to leave their piece of land, their crops and most of their animals; much of the property was reportedly stolen immediately or confiscated by SLORC troops.

75. Beginning in early March 1996 SLORC troops reportedly relocated more than 600 villages, comprising more than 20,000 households, in central and southern areas of Shan State.

76. Beginning in April 1996 SLORC reportedly started a mass relocation programme in Kayah State, relocating 100 villages between the Pon and the Salween rivers to relocation sites in Shadaw and Ywa Thit. Villagers received written orders stating that they would be treated as enemies if they did not move to the two relocation sites by June 1996.

77. Since 29 August 1996 SLORC troops stationed at Murngai had reportedly forced the villagers of Kun Sai, Nar Loi and Wan Mai, Murngnai township, to move into the town. The villagers were given five days to transport their possessions. On 9 March 1997 SLORC troops reportedly ordered villagers from Wan Nong Dee, Laihka township, to move to Laihka.

78. On 23 May 1997, SLORC troops from Murngkerng forced the people of several villages, such as Wan Yab, Ton Pek, Ho Nar, Loi Yang, Nar Taed, Tong Zu, Ham Ngai and Ho Khai, to all move to Murngkerng town. People in Wan Phen and Nar Phen had to move to Kaesee town.

79. On 1 June 1997 Captain Naw Win, head of TLORC in Murngkerng, issued a written order forcing all the people in the rural areas of Murngkerng to move close to the motorways. The movement had to be completed within eight days, from 1 to 8 June 1997. Any villages or houses that failed to move would be burnt down. In addition, the villagers were forbidden to cultivate their farms and fields.

80. On 25 July 1997 a combined force of SLORC troops ordered the residents of Lisaw village of Nawng Tao, 15 miles east of Murngpan town, to move within three days, leaving much of their property behind.

81. Numerous accounts received by the Special Rapporteur indicated that the civilian population living in or near the combat zone was the most susceptible to being forced to move: in those "grey zones" (zones controlled or influenced by the insurgents), the armed forces often resorted to ground searches, destruction and burning of houses and confiscation of property and food, which led the people to move temporarily or permanently.

82. In April 1997 the seven villages of Wan Phar Wawng, Wan Nawng Kern, Wan Zalai Loi, Wan Ho Nam, Wan Nawng Wo, Wan Kung Parng and Wan Nam Maw Long, all in Laihka township, were reportedly relocated and burned down by SLORC troops.

83. On 17 July 1997 a military column led by Captain Myint Shwe came to Pa-nweh-po-klo village, Tavoy-Mergui District, and allegedly burnt down the village's Christian church. On 26 July 1997 the column allegedly burnt down five houses and the church in Pay-cha village.

84. Since the end of June 1997, as a part of the Myay Lan Sanit campaign, SLORC troops have reportedly burnt down approximately 256 Karenni houses in seven villages in the Mawchhi area, as described below:

(a) On 20 August SLORC troops under the command of Win Htwe burnt down 25 buildings in Lwe Po village, including the church;

(b) On 21 and 22 August SLORC troops allegedly burnt down 70 houses in upper and lower Gay Loe village and destroyed 21 acres of planted rice paddy as well as a substantial quantity of brown rice;

(c) On 24 August SLORC troops under the command of Aung Myo Min reportedly burnt down 28 houses in Kaw Moo De village;

(d) On 25 August SLORC troops under the command of Soe Nwe and Win Soe allegedly burnt down 16 houses of Ywe Beh village and destroyed 35 acres of planted rice paddy;

(e) On 25 August SLORC troops under the command of Lieutenant Colonel Khin Mg Htay allegedly burnt down 25 buildings, including the church, in Hu Muu Lah village;

(f) On 26 August SLORC troops under the command of Major Win Htwe allegedly burnt down the church of Kwe Kee village and 54 houses of Htee Sar Beh Htee village;

(g) On 27 August SLORC troops allegedly burnt down 28 buildings in Bwe Lay Kho village, including the church.

2. Indiscriminate bombardment of civilian settlements and arbitrary killings

85. Reports of artillery bombardment of civilian settlements and the burning of villages have been received by the Special Rapporteur on a regular basis since he was first appointed in June 1996. He now has lists of allegedly destroyed villages and ethnic settlements located in many areas (Shan, Kayin and Kayah) of the vast border between Thailand and Myanmar. However, there was a noticeable increase in the receipt of allegations of arbitrary killings of civilians during the summer of 1997.

86. On 9 March 1997 SLORC troops reportedly fired 79-mm mortar shells into the village of Kun Hong, Laihka township, killing Nang Seng and Loong Zum and

wounding three others. Earlier that day, SLORC troops from Laihka had forced the villagers to move. However, five of the villagers had to spend the night in the village owing to a shortage of carts in which to carry them. Patrolling troops had fired mortar shells when they heard a dog barking.

87. On 4 April SLORC troops allegedly fired M 79 grenades into the Tard Mawk relocation site. Three villagers died and another three were wounded. On 8 April 150 SLORC troops came into the Tard Mawk relocation site and ordered all villagers to move to a Laihka township within two days. On 10 April SLORC troops reportedly burnt down all the more than 1,000 houses at the Tard Mawk relocation site.

88. On 16 April SLORC troops reportedly dropped six rounds of mortar shells into Murangkerng town, causing a lot of damage. For example, one of the shells exploded in the compound of Kyawang Kham temple.

89. While the Special Rapporteur has received reports and specific allegations of shelling and bombardments of civilian settlements, the most consistent violation of the right to life is said to stem from the continuing summary and arbitrary executions within the border areas, resulting in the death of large numbers of innocent persons, including women, children and elderly persons. Such killings often take place when relocated people try to go back to their original villages in order to work their fields or take their possessions

90. On 19 April 1997 two women from Kung Kyawng village, Namzarng township, were reportedly raped and killed by seven SLORC troops south of Kho Lam. The two women had gone to tend their farm.

91. On 4 May Sai Nya Mon was reportedly shot dead by SLORC troops from Nam Mo. Sai Nya Mon had gotten permission from the SLORC troops to work on his farm at his former village of Kun Sai. While he was driving his old bullock cart towards Kun Sai, SLORC troops went after him and shot him dead in a field near the village. The soldiers left the cart and took the oxen back to Nam Mo where they killed them for meat.

92. On 11 May 15 Palawng villagers of Pha Ngarb village, Namzarng township, were reportedly killed near the village of Nawng Kwai. The villagers, who had been relocated at Kho Lam, had gone back to their former village of Pha Ngarb with five hired bullock carts to gather their belongings. Their bodies were dumped together in a pile, and all the carts and oxen were taken away by SLORC soldiers.

93. On 11 May Sai Nan Ti of Pa Mai village, Namzarng township, was reportedly shot dead on sight by SLORC troops. He had gone searching for his oxen near his former village of Pa Mai after being relocated at Kho Lam. On 14 May Sai Nan Ta and his brother, both from Wan Nang village, were reportedly arrested and killed while cleaning the irrigation ditches in their rice field at the village of Wan Nang near Nam Mawng stream, five miles south of Kho Lam. One of the brothers had run and jumped into Nam Mawng stream, but was chased and shot dead in the water. The other was tied up and beaten to death with a heavy stick on the bank of Nam Mawng stream.

94. On 6 June troops led by Major Nyunt Oo arrested 26 people in Pha Lang village, Kunhing District. The people were accused of having relocated without permission. According to the information received, all 26 villagers were tied up and shot dead at close range. The following villagers were reported killed: Pu Loi Kaw, Nai Loi Poi, Lai Zern Yong, Nai Zing, Su Nan Ta, Nang Kham, Sang Aw, Khat Nya, Wi Ling, Mu Ling, Kaw Ling, Su Ping Nya, Khing Thun, Khing Min, Sai Wong, Loong Man, Ae Nang, Kaw Ya, Su Ling, Loong Saw, Nang Lao, Nang Mart, Nang Seng Zing, Ook Ta Ma, Na Ling and Su Nan Ta.

95. On 11 June a patrol of SLORC troops killed 10 villagers who were gathering at a rice paddy in the deserted village of Wan Phai in Kunhing township. The reported victims were Loong Zarm, Pan Ti, Sai Suay, Sai Ekka, Su Zing, Kaw Na, Khing Khong, Wa Ling Ta, Khing Ung and Pan Ta.

96. Apart from the allegations of indiscriminate killings and burning of civilian settlements, the Special Rapporteur has continued to receive allegations of other arbitrary killings and extrajudicial executions of persons, either in their villages or after having been taken by the military from the area. General reports have been received stating that all persons are at risk of arbitrary killing on the mere suspicion of being a "criminal" or "sympathizer", or of harbouring or assisting "insurgents". Testimony indicates that some persons who tried to flee were threatened or actually prohibited from doing so. Attempting to flee is said to be interpreted by the authorities as positive proof of participation in or sympathy with the insurgency and of an intention to report on the abuses committed by the army. Others were required to obtain safe-conduct passes or pay high fees at checkpoints for permission to leave. Other sources have reported incidents of women and children being shot at while fleeing in areas near the border with Thailand.

97. On 29 March 1997 SLORC troops from Kho Lam under the command of Major General Khin Maung reportedly killed Sai Phit of Nawng Kwai village, Namzarng township. He was arrested at his house while sleeping with his wife and children, tied up with rope and taken to a place near a white bridge in the village, where he was beaten while being interrogated and finally shot dead.

98. On 18 May 1997 Major Aye Thant and his troops reportedly killed Sai Vi, Sai Vilarsa and Sai Saw Ta in Wan Mawk Zali village, Murngton township. The three men were arrested, accused of being soldiers of the Shan United Revolutionary Army (SURA), tied up, beaten, put into sacks and submerged in water several times before they were killed.

99. On 20 May SLORC troops led by Major Aye Thant reportedly killed Sai Ti Mar and Sai Thun in the village of Mawk Zali, Murngton township. Accused of supporting SURA they were tied up, beaten, put into sacks and submerged several times into water until they were dead.

100. On 22 May Major Kyi Aung and his troops from Murng Tar reportedly killed Loong Tan, Loong Than Ou, Loong Su, Sai Aw Ta, Sai Vi Zing Tar and Nang Kham in Wan Huay Aw. The six villagers had been arrested two days earlier and accused of having given SURA food and news.

101. It was reported that between mid-June and mid-July at least 400 civilians had been killed by SLORC troops in the areas of Sai Kao, Kaeng Lom, Kaeng Kham and Kho Lam in Kunhing township.

102. On 11 July, on the road that branches out from the main road to Kaeng Lom, the corpses of 26 villagers were lined up with their heads laid besides their bodies. On 12 July, on the road between Kaeng Lom and Kaeng Tawng, 17 corpses were lined up in the same manner.

3. Arbitrary arrest and torture of suspected "insurgents" and "terrorists"

103. Reports indicate that the people living in Shan State are in constant fear of arbitrary arrest and detention. It is further stated that in the course of arrest and detention persons are subject to harsh treatment and torture while being denied access to virtually any form of judicial process. As a result, there appears to be a widespread, if not universal, fear of governmental authorities in the region.

104. Reports received refer to the army, Tatmadaw, as responsible for arbitrary arrests and detentions. Large numbers of security checkpoints are said to have been placed in and around the towns and cities of the region. Military patrols are said to move in and out of the border areas arresting civilians when they are so inclined. Testimony indicates that often the distinction between insurgents and non-combatants is not made and that, therefore, the inhabitants of those areas who are suspected of being insurgents or sympathizers of insurgents are subject to indiscriminate torture, beatings and arbitrary arrest.

105. On 31 March 1997, SLORC troops reportedly tortured four villagers of Wan Parng village, Laihka township. The soldiers tied them up with ropes, beat them and interrogated them. After a while, when the villagers could not tell soldiers what they wanted to know, they tied hay to the body and arms of one villager, set fire to the hay and let him loose. They tied another villager to a post of a hut and burned him with the hut. Meanwhile, the soldiers forced the other two villagers to watch and threatened to do the same to them if they did not tell what they knew. The soldiers beat the two men several more times and finally threw them into Nam Tawng stream east of Wan Parng. After the SLORC troops left the scene, the two villagers who were burned managed to free themselves and walked to the home of their relatives at Zalai village, seven to eight miles to the south. Although their relatives immediately sent them to the hospital in Laihka, both of them died there shortly afterward. One of the victims, who was accused of defying orders by refusing to move away and of having connections with the Shan resistance, was Sai Lao, 18 years of age.

106. In early April Loong Pingnya, a villager of Kan Kan, Murngpan township, was reportedly tortured by SLORC troops. His hands and feet were reportedly bound and he was stuffed into a gunny sack. The troops tied the mouth of the sack and submerged him in the water under a bridge near the Pho Ti temple, pulled him out after a few minutes and trampled on his chest until water gushed out of his mouth while interrogating him. Then the troops submerged him in the water again. The procedure continued until he died.

107. On 13 April SLORC troops reportedly tortured a villager from Pang Tet Teo, a 60-year-old man named Loong La, near Nawng Ya Sai village, Laihka township. They tied him up, beat him, rolled a piece of bamboo on his shins and finally cut off his lips. He was arrested while tending a small plot of onions on his farm, accused of supporting the Shan resistance.

108. On 1 July SLORC troops led by Major Htun Mya ransacked the Kaeng Lom area and reportedly arrested 96 villagers of Waeng Kham, Kun Mi, Wo Long, Nar Taw, Wan Parng, Ho Ha, Nar Poi, Karng Nar, Nar Yao, Son Sarng, Nar Khar Awn and Nar Khar Long villages. They were all gathered together at the village of Kun Mi and were beaten, tortured and questioned. On 3 and 4 July the SLORC troops put plastic bags over the villagers' heads until they suffocated and threw the bodies into the Nam Parng River. The women were allegedly raped before being killed.

109. On 12 August 1997 the Ler-der-poo villager Saw Bla Daya was allegedly arrested and executed by a military column led by Khin Maung Win. The following day the column reportedly arrested and executed Hseet-ku villagers Saw Ko Sher, Saw Ba Nee, Saw Pee Ler, Saw Ba Shwe and Saw Wah Ler.

B. Treatment of the Muslim population in Rakhine State

110. According to information received by the Special Rapporteur, there are estimated to be about 7 million Muslims living in Myanmar today approximately 1.2 million of whom live in the Rakhine State. The first Muslims in the Rakhine area immigrated in the twelfth and thirteenth centuries. A second wave of immigration occurred in the seventeenth century, and a third in the early nineteenth century. The third immigration movement took place while Myanmar (then Burma) was a colony under British rule. The movement of person across what would later become the border between India and Myanmar was unimpeded and natural. By the time Burma became an independent union in 1948, there was a consolidated Burmese Muslim population of Indian ethnic origin.

111. In early 1992 there was a mass influx of some 250,000 Muslim refugees, referred to as Rohingyas, into Bangladesh from Rakhine State in Myanmar. In order to address the problem, a joint statement was made by the Governments of Myanmar and Bangladesh, on 23 April 1992, concerning the voluntary repatriation of the refugees. Bangladesh requested the assistance of the Office of the United Nations High Commissioner for Refugees (UNHCR) to facilitate the repatriation and memoranda of understanding between UNHCR and the Governments of Bangladesh and Myanmar, which were signed on 12 May and 5 November 1993 respectively.

112. Between September 1992 and the end of 1996, a total of 220,118 refugees had returned to Myanmar and, according to UNHCR, it was anticipated that the remaining 30,000 refugees would have returned from Bangladesh to Myanmar by June 1997.

113. Although the repatriation process was scheduled to be completed by mid-1997, the Special Rapporteur has been informed that between 5,000 and 25,000

Muslim refugees had fled over the border to Bangladesh in the first half of 1997 in order to escape forced labour, portering and starvation.

114. Indeed, extensive recruitment for compulsory labour was mentioned as one of the main reasons for the mass exodus in 1991 and 1992. It continues to be an issue of concern. Although UNHCR has, from the outset of its involvement, focused on this issue and has repeatedly intervened with regard to returnees being called for compulsory labour, the authorities agreed to exempt the returnees only for the first two months after their arrival and to limit compulsory labour for the entire population in the area. In addition, the Muslim population of northern Rakhine State, including returnees, are subject to compulsory labour requests by different government authorities. They are forced to provide physical labour for 7 to 10 days a month without pay.

115. In December 1996 and January 1997 Rohingya villagers were reportedly used for forced labour in Rakhine State. Prisoners in chains and villagers were forced to work on roads from Kyautaw to Buthidaung and from Sittwe to Kyawtaw.

116. According to testimony received by the Special Rapporteur, many of the new refugees said that they had fled because of starvation. The food situation worsened in mid-1997 because of the fact that the whole of Myanmar suffered severe inflation, with the value of the kyat falling from $1:120 kyats in January 1997 to $1:380 kyats in June 1997. In Arakan State rice prices increased to 60 kyats per kilo in June 1997, compared to 20 kyats in June 1996. Taking into account that an average wage for a day labourer was only 50 kyats and that SLORC reportedly refused to allow local traders to import rice from Bangladesh, people were left with no option but to flee.

117. Cases of physical abuse and extortion of returnees have also been reported to the Special Rapporteur. As is the case for the rest of the local population in Rakhine State, all the families are requested to contribute financially or by contributing crops as taxes for the various development projects that are being carried out in the region.

118. In February 1996 Rohingyas reportedly had to pay a fee when going to the river to fish or to the forest to cut bamboo. Further, a 35-year-old man from Maungdaw reportedly had to pay 20 kyats for a permit to travel every time he wanted to go to the market to sell his eggs or chicken meat.

C. The issue of citizenship

119. In his report to the General Assembly (A/51/466) the Special Rapporteur made some observations on the issue of citizenship. It would be useful to examine the legislation governing citizenship, if only summarily, in the light of the information that is available, as such examination may raise questions concerning its consistency with internationally recognized norms. The Special Rapporteur notes that he has not had the benefit of discussion with the Myanmar authorities on this issue and that he proposes to do so when he is authorized to visit the country.

1. The different types of citizenship

120. Under the 1982 citizenship law there are three types of citizens: full, associate and naturalized.

121. A full citizen must be able to prove his birthplace and the nationality of his ancestors prior to the first British annexation in 1823, and they must have belonged to an ethnic group settled on the territory before that year.

122. An associate citizen is a person one of whose grandparents was a citizen of another country. Associate citizenship is thus reserved for former foreign citizens or Stateless persons. One must note, however, that, in accordance with decree No. 3 relating to the citizenship law, the deadline for submission of applications for associate citizenship expired on 15 October 1982, and foreigners and Stateless persons can thus no longer apply for associate citizenship.

123. Citizenship by naturalization can be granted to a person who can prove that he was born in Myanmar and his parents had entered and resided in Myanmar before 4 January 1948. Persons with one parent who is a full, associate or naturalized citizen and one whom is a foreigner, with parents who are both naturalized citizens with one parent who is a naturalized and one who is an associate citizen can also apply for naturalized citizenship. Applicants for naturalized citizenship must be able to speak one of the national languages well.

2. Obtaining citizenship

124. While full citizens pass on their citizenship to their children if married to a person holding any form of citizenship, children born of parents who are either both naturalized citizens or one a naturalized and the other an associate citizen do not automatically become citizens, but can apparently apply for naturalized citizenship. The citizenship law does not stipulate the status of children whose parents are both associate citizens, but it would seem that in practice such children would receive associate citizenship more or less automatically.

125. Regarding applications for citizenship, the only provision still enabling applications is section 8(a) of the 1982 citizenship law, which gives the authorities the possibility to confer in the interest of the State, on any person, citizenship or associate or naturalized citizenship. The decision would thus seem to be completely within the discretion of the authorities, as there is no clear legal right to obtain citizenship upon fulfilling certain criteria.

3. Revocation of citizenship

126. All forms of citizenship, except full citizenship may be revoked by the State. Full citizenship can be revoked only if the person acquires the citizenship of another country or leaves Myanmar permanently. Associate and naturalized citizens can also be deprived of their citizenship on a number of other grounds. The grounds for revocation are so widely formulated that they

may easily give rise to arbitrariness in application. A person deprived of citizenship cannot, according to article 22 of the citizenship law apply, to become citizens again. By declaration 3/93 of 6 May 1993, the Government invited former citizens residing abroad who wished to give up their foreign nationality to apply for Myanmar citizenship within a year, an invitation seemingly not extending to persons deprived of their citizenship against their will.

127. As for the right to appeal decisions on revocation of citizenship, it would seem that a person whose citizenship has been revoked by a decision of the Central Board has the right to appeal to the Council of Ministers. The Central Board, consisting of the Minister for Immigration and Population as Chairman, the Minister for Defence, the Minister for Home Affairs, the Minister for Foreign Affairs and one person to be designated by the Chairman, has the competence to decide whether a person is a full, associate or naturalized citizen and to revoke or terminate citizenship.

D. Conformity of the different forms of citizenship with international norms

128. Article 21 of the Universal Declaration of Human Rights provides, inter alia, as follows:

"(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

"(2) Everyone has the right of equal access to public service in his country."

Article 2 states:

> "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Further, article 16 of the Declaration provides that:

> "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family ... The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

129. Article 7 of the Declaration states that "All are equal before the law and are entitled without any discrimination to equal protection of the law."

130. The above provisions of the Declaration have also been reflected in articles 2, 23, 25 and 26 of the International Covenant on Civil and Political Rights. In particular, article 25 was the subject of a general comment adopted by the Human Rights Committee at its 57th session.* Further, there is a provision in article 24 that states that every child has the right to acquire a

nationality. It is significant to note that the Human Rights Committee, in its general comment, stated that, "Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects. Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant." The Committee further stated that no distinctions were permitted between citizens in the enjoyment of those rights on the grounds, among others, of race, language, religion, national or social origin or birth status. Distinctions between those who acquired citizenship by birth and those who were naturalized may raise question of compatibility with the Covenant.[a]

131. The various distinctions that exist in the law of Myanmar regulating citizenship and its effect on the right to vote, to be elected or to have access to public office, and indeed on other rights promulgated in the Declaration and that are common to citizens as well as non-citizens in any given State, such as freedom of expression, movement, association and all the other fundamental rights, would appear to raise serious questions of compatibility with the principles governing the enjoyment of fundamental rights as promulgated in the Declaration.

132. In Myanmar, only full and naturalized citizens are entitled to enjoy citizenship rights, with the exception of rights from time to time stipulated by the State. All forms of citizenship entail the right to vote, but only full citizens may stand as candidates in elections.

133. Although not precluded by the citizenship law, an associate citizen cannot in practice own land or fixed property, be educated as a doctor or an engineer or work as a private teacher or for a foreign firm, United Nations agency or foreign embassy or stand for any elected post.

1. Citizenship identity cards

134. While all citizens are in principle entitled to a passport for travel abroad, the passports remain with the authorities while their holders are staying in Myanmar, and thus cannot be used for identification. Instead, citizens are required to carry identity cards (citizenship cards) at all times.

135. The identity cards are coloured differently according to the type of citizenship one possesses. The cards must be produced to enjoy a number of basic rights and services: to vote, to buy travel tickets, to stay outside one's ward of residence with friends or family or in hostels, to receive health services or to attend high school or university. Identity cards are routinely checked by the police and the army. The card number is noted in connection with the smallest transaction and is sent to the relevant authorities. In 1990 the identity cards were changed, and now also include mention of ethnic origin and religion. The necessity of mentioning a person's ethnicity and religion in this way remains open to question.

136. The confiscation of identity cards has also been used by the authorities as a means of harassment of recognized citizens.

137. On 26 January 1997 two NLD executives, who were staying in the Tawwin guest house in Myaungmya township were searched and had their citizen identity cards confiscated by local authorities. The cards were returned only after they had signed a pledge to return immediately to Yangon. Their meeting with the Chairman of the NLD Irrawaddy Divisional Organizing Committee was thus prevented.

138. The lack of proof of citizenship in the form of identity cards affects numerous aspects of life of those concerned. First, the right to freedom of movement is restricted. Not only are these persons prevented from travelling abroad, but they cannot even travel outside their ward of residence, as an identity card is needed to register as an overnight guest. The lack of an identity card in addition precludes access to health services and prevents young people from attending high school or university.

2. Groups particularly affected

139. Many persons belonging to ethnic minorities have no identity cards, even if they would be entitled to full citizenship under the citizenship law. Proving entitlement to citizenship is made difficult by lack of access to written records and the difficulty of travelling to government-controlled areas for registration. Furthermore, government officials are said to be generally unwilling to register persons belonging to minorities.

140. It is almost impossible for the Rakhine Muslims, or Rohingya, to become registered citizens, in particular children born in refugee camps. Following the promulgation of the 1982 citizenship law, all citizens were obliged to register for new identity cards. By December 1992, only 845,000 out of 1,200,000 inhabitants of Rakhine State had applied, the lowest percentage in the country. About 30 per cent of the relatively few applications made in Rakhine State were either rejected or are still awaiting a decision. Still, none of the returnees from Bangladesh is said to have received identity cards classifying them as any form of citizen. In fact, the Government of Myanmar refers to the returnees as Bangladeshi citizens. The army was said to have taken away the old identity cards from the 1950s and 1960s from many Muslims as they left the country. The only identity documents owned by many Rakhine Muslims are thus allegedly copies of so-called family lists, or lists of household members that are kept by local villages or township authorities as proof of residence. In July 1995 the Government issued new temporary registration certificates, intended for foreign residents or Stateless persons, to the population of northern Rakhine State, at least in theory both to returnees and to persons who never left. The cards were issued not on the basis of the 1982 citizenship law but on the basis of the 1949 Residents of Burma Registration Act and the 1951 Residents of Burma Registration Rules, both reintroduced solely for the purpose of registering the Rohingya. No figures as to the number of Rohingya who have in fact received the cards are available.

141. Most of the Muslim population of Rakhine State have not been issued citizenship cards under the existing naturalization regulations, and indeed most of them are not even considered so-called foreign residents.

142. The 1982 citizenship law would in fact seem to be intended to prevent the Rakhine Muslims from being recognized as citizens, as the majority of the group settled in Myanmar after 1823. The law is, however, not always applied, and the Rohingya were permitted to vote and to form political parties during the 1990 elections, which must be seen as a de facto recognition of the status of the Rohingya by the Government.

VII. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

143. The Special Rapporteur has unfortunately come to the conclusion, based on his examination of the human rights situation in Myanmar over the past year, that there has been no change in the situation since he submitted his report to the General Assembly in 1996 and to the Commission on Human Rights in 1997 and that his recommendations have gone unheeded by the Government of Myanmar. As a result, the conclusions of the Special Rapporteur in his reports to the General Assembly at its fifty-first session (A/51/466, paras. 146-152) and the Commission on Human Rights at its fifty-third session (E/CN.4/1997/64, paras. 101-107) remain substantially the same, except for the fact that, according to certain reports, a meeting took place in mid-July between a representative of SLORC and an official of NLD. There have been suggestions that the substance of the discussions was political in character, but the Special Rapporteur has no concrete information in that regard.

144. The Special Rapporteur regrets that, in spite of his continuing efforts to obtain the authorization of the Government of Myanmar to visit the country and in spite of the encouraging statements made by the Permanent Representative of Myanmar, both in the General Assembly and in the Commission on Human Rights, he has not so far obtained any response. The Special Rapporteur has nevertheless taken great care in assessing the information gathered from all sources and organizations, both intergovernmental and non-governmental, including information gathered during his mission to the Myanmar/Thailand border in the light of the laws, decrees and orders of Myanmar available in the Office of the United Nations High Commissioner for Human Rights.

145. The Special Rapporteur observes that the absence of respect for the rights pertaining to democratic governance continues to be at the root of all the major violations of human rights in Myanmar. Such absence is inherent in a power structure that is autocratic and accountable only to itself, thus resting on the denial and repression of fundamental rights. The Special Rapporteur concludes that genuine and enduring improvements in the human rights situation in Myanmar cannot be attained without respect for the rights pertaining to democratic governance. In that regard, he notes with particular concern that the electoral process initiated in Myanmar by the general elections of 27 May 1990 has yet, after seven years, to reach its conclusion, and that the Government still has not implemented its commitments to take all necessary steps towards the establishment of democracy in the light of those elections.

146. Government representatives have repeatedly explained that the Government is willing to transfer power to a civilian Government, but that in order to do so

there must be a strong constitution, and that in order to have a strong constitution they are doing their best to complete the work of the National Convention. However, the Special Rapporteur cannot help but observe that, given the fact that most of the representatives who were democratically elected in 1990 have been excluded from participating in the meetings of the National Convention, the restrictions imposed upon the delegates (practically no freedom to assemble, to print and distribute leaflets or to make statements freely) and the strict guidelines (including the requirement that the Tatmadaw play a leading role), the National Convention does not constitute the necessary steps towards the restoration for democracy, fully respecting the will of the people as expressed in the democratic elections held in 1990.

147. The well-documented reports, photographs and testimony received by the Special Rapporteur lead him to conclude that extrajudicial, summary or arbitrary executions, the practice of torture, portering and forced labour continue to occur in Myanmar, particularly in the context of development programmes and counter-insurgency operations in minority-dominated regions.

148. With regard to arbitrary arrest and detention, the Special Rapporteur does not doubt that such violations take place on a wide scale, if for no other reason than that an examination of the laws in place shows that such violations are legal and may easily occur. At the same time, the absence of an independent judiciary, coupled with a host of executive orders criminalizing far too many aspects of normal civilian conduct that prescribe enormously disproportionate penalties and authorize arrest and detention without judicial review or any other form of judicial authorization, leads the Special Rapporteur to conclude that a significant percentage of all arrests and detentions in Myanmar are arbitrary when measured against generally accepted international standards. The Special Rapporteur expresses his deep concern at the continued detention of many political prisoners, in particular elected representatives, and the recent arrests and harassment of other supporters of democratic groups in Myanmar, culminating in the massive arrests of NLD supporters and the virtual blockade of the General Secretary of NLD in her compound.

149. On the basis of virtually unanimous reports of continuing violations and other information, the Special Rapporteur concludes that there is no freedom of thought, opinion, expression or association in Myanmar. The absolute power of SLORC is exercised to silence opposition and penalize those holding dissenting views or beliefs. Because of both visible and invisible pressures, the people live in a climate of fear that whatever they or their family members say or do, particularly in the area of politics, they risk arrest and interrogation by the police or military intelligence officers. The Special Rapporteur notes that NLD leaders cannot assemble in a group, cannot freely discuss and cannot publish or distribute printed or videotaped material. In such circumstances it is difficult to believe that open discussion and free exchanges of views and opinions can possibly take place in Myanmar, unless they are in support of the present military regime.

150. Turning to freedom of movement and residence in Myanmar, including the right to leave and re-enter one's own country, the Special Rapporteur concludes that there are clear violations of those freedoms in both law and practice. Specifically, severe, unreasonable and, in the case of the Muslim Rakhine

population, racially based restrictions are placed on travel inside the country and abroad. On the matter of internal deportations and forced relocations, the Special Rapporteur concludes that the Government's policy violates freedom of movement and residence and, in some cases, constitutes discriminatory practices based on ethnicity.

151. An analysis of the laws relating to citizenship and their effect on the exercise of civil and political rights raises serious questions of the consistency of those laws with generally accepted international norms, since those laws appear to be discriminatory on the basis of religion, ethnicity, equality before the law and special measures of protection to which children are entitled. In the short term this situation produces serious violations of the rights of both minorities and other persons living in the country as well as a sense of not belonging to Myanmar. In the long term, the situation is likely to encourage and exacerbate secessionist movements likely to be destructive of a multi-ethnic and multi-religious nation. Sheer repression following efforts at ceasefire agreements would not appear to be the answer.

B. Recommendations

152. In the light of the foregoing conclusions, the Special Rapporteur submits the following recommendations for the consideration of the General Assembly and of the Government of Myanmar:

(a) To ensure that the Government of Myanmar genuinely reflects the will of the people, steps should be taken to allow all citizens to participate freely in the political process in accordance with the principles of the Universal Declaration of Human Rights and to accelerate the process of transition to democracy, in particular through the transfer of power to the democratically elected representatives. The institutions of Myanmar should be such as to ensure that the executive authorities are accountable to the citizenry in a clear and meaningful way and, furthermore, steps should be taken to restore the independence of the judiciary and to subject the executive to the rule of law and render unjust and unjustifiable action justiciable;

(b) All necessary measures should be taken to accelerate the process of transition to a democratic order and to involve in a meaningful way the representatives duly elected in 1990. Genuine and substantive discussions should take place without further delay between the present military regime and the leaders of NLD and with other political leaders who were duly elected in the democratic elections of 1990, including representatives of ethnic minorities. Certain steps reportedly taken in July by SLORC, apparently to initiate such discussions, are a welcome and positive development, but that development must be intensified. SLORC should do all it can to ensure that the character and substance of the discussions are genuine and are perceived to be so by all the participants;

(c) Immediate measures should be taken to put an end to the harassment of the leaders and the membership of NLD, to ensure that the General Secretary of NLD is genuinely free and able to exercise her functions without fear of attack

and to ensure that all political parties are able freely to exercise their rights;

(d) All political detainees, including elected political representatives, students, workers, peasants and others arrested or detained under martial law after the 1988 and 1990 demonstrations or as a result of the National Convention should be tried by a properly constituted and independent civilian court in open judicial proceedings and in accordance with all the guarantees of fair trial and due process in conformity with applicable international norms. If found guilty in such judicial proceedings, they should be given a just sentence proportionate to their offence. Otherwise, they should be released immediately, and the Government should ensure that there are no acts of intimidation, threats or reprisals against them or their families and take appropriate measures to compensate all who have suffered arbitrary arrest or detention;

(e) Constitutionality and the rule of law should be re-established, and SLORC orders and decrees should no longer be the basis of law. All laws rendering violations of human rights legitimate should be repealed immediately, and all laws should be given due publicity. The principle of non-retroactivity of penal laws should be respected in all circumstances;

(f) The Government of Myanmar should give particular attention to prison conditions and take all necessary steps to allow international humanitarian organizations to have access thereto and to communicate freely and confidentially with prisoners;

(g) Urgent steps should be taken to facilitate and guarantee the enjoyment of the freedom of opinion, expression and association, in particular by decriminalizing the expression of opposition views and by relinquishing government controls over the media and literary and artistic works;

(h) Restrictions relating to the entry and exit of citizens into and out of the country, as well as their movement within the country, should be abolished;

(i) All discriminatory policies that interfere with the free and equal enjoyment of property should cease, and adequate compensation should be given to those who have been arbitrarily or unjustly deprived of their property;

(j) The Government of Myanmar should fulfil its obligations under ILO Convention No. 87 of 1948 concerning freedom of association and protection of the right to organize. In compliance with that Convention, it should guarantee by law the existence and practice of free trade unions. In that respect, the Government of Myanmar is encouraged to cooperate more closely with ILO through a technical cooperation programme so that the very serious discrepancies between law and practice, on the one hand, and the Convention, on the other hand, are eliminated immediately;

(k) The Government of Myanmar is urged to comply with its obligations under ILO Convention No. 29 prohibiting the practice of forced labour and forced portering. The Government should urgently take measures to repeal the offending legal provisions under the Village Act and the Towns Act to prevent the

continuation of the practice of forced labour. The Government is encouraged to cooperate with the ILO Commission of Inquiry;

(l) The Government of Myanmar should take immediate steps to put an end to the enforced displacement of persons and to create appropriate conditions to prevent the flow of refugees to neighbouring States. In the event that the relocation of villagers becomes necessary in circumstances that are in conformity with international norms, proper consultations should take place with the villagers, including the payment of appropriate compensation, reviewable by independent courts, and measures to ensure that adequate food, housing, medical care and social amenities, including arrangements for the education of children, are provided;

(m) The Government of Myanmar should refrain from actions that contribute to insecurity affecting the population, such as the use of military forces and bombardments against civilian targets along its border with Thailand;

(n) In order to promote the repatriation of the Muslims and other minorities of Myanmar, the Government should create the necessary conditions of respect for their human rights. The Government should ensure, in law and in practice, their safe return and resettlement in their villages of origin. To that end, it should also promote their complete civil, political, social, economic and cultural participation in Myanmar without restriction or discrimination due to status;

(o) The laws relating to citizenship should be revised in order to ensure that they have no unfavourable incidence on the exercise of civil and political rights and to be consistent with generally accepted norms. Such laws should be substantially revised so as to remove all discriminatory features based on religion, ethnicity or inequality and to remove any adverse impact on the right of children to have a nationality. Further, measures should be adopted by the Administration to ensure that citizenship can be obtained without burdensome and unrealistic administrative procedures and requirements. Those laws should also be brought into conformity with the principles embodied in the 1961 Convention on the Reduction of Statelessness. Consideration should also be given by Myanmar to ratify that Convention as well as the 1951 Convention relating to the Status of Refugees and its Additional Protocol of 1967. The 1982 citizenship law should be revised or amended to abolish its overly burdensome requirements for citizenship. The provision of the law regarding categories of second-class citizens should not be applied in a manner that has a discriminatory effect on racial or ethnic minorities, particularly the Rakhine Muslims. It should be brought in line with the principles embodied in the Convention on the Reduction of Statelessness;

(p) The Government of Myanmar should take steps to bring the acts of soldiers, including both privates and officers, in line with accepted international human rights and humanitarian standards so as to prevent arbitrary killings, rapes and confiscation of property, or forcing persons into acts of labour, portering, relocation or otherwise treating persons without respect for their dignity as human beings. When local villagers are hired for porterage and other work, it should be done with their consent and adequate wages should be paid. The nature of the work should be reasonable and in accordance with

established international labour standards. When the relocation of villagers is considered necessary for military operations or for development projects in the public interest, proper consultation with the villagers should take place and appropriate compensation should be paid. The amount of the compensation should be reviewable by independent courts;

(q) Military and law enforcement personnel, including prison guards, should be thoroughly informed and trained regarding their responsibilities in accordance with international human rights norms and humanitarian law. Such standards should be incorporated into Myanmar law, including the new constitution;

(r) Given the magnitude of the abuses documented, the Government should subject all officials committing human rights violations to strict disciplinary control and punishment and put an end to the culture of impunity that prevails at present in the public and military sectors;

(s) The Government of Myanmar is urged to fulfil in good faith the obligations it assumed under Articles 55 and 56 of the Charter of the United Nations to take joint and separate action in cooperation with the Organization for the achievement of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. The Special Rapporteur notes that the Government of Myanmar should encourage the adoption, as one of the basic constitutional principles, of the provisions of the Universal Declaration of Human Rights, a copy of which should be made widely available in the main languages spoken in Myanmar;

(t) The Government of Myanmar should further consider accession to the international covenants on human rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the two additional protocols to the Geneva Conventions of 1949 and, in the meantime, to ensure the application of the principles proclaimed in those international instruments in order to evidence a firm commitment towards the promotion and protection of human rights without discrimination of any kind outlawed under those norms;

(u) Myanmar law should be brought in line with accepted international standards regarding protection of physical integrity rights, including the right to life, the protection against "disappearance", the prohibition of torture, cruel, inhuman or degrading treatment, the provision of humane conditions for all persons under detention and the insurance of basic judicial guarantees.

Notes

[a] Official Records of the General Assembly, Fifty-first Session, Supplement No. 40 (A/51/40), General Comment No. 25 (57), para. 365 and annex V.